IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO. 620 OF 2006
IN
SUMMONS FOR JUDGEMENT NO.675 OF 2005
IN
SUMMARY SUIT NO.2706 OF 2005

M/s.Sambhav Diamonds .. Appellant
v/s.
Crystal Traders BVBA .. Respondent

Mr.Murtaza Nazmi with Mr.D.L.Joshi i/by Mr.D.L.Joshi for the appellants.

Mr.O.S.Kutty i/by M/s.Haresh Mehta & Co. for the respondent.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 21ST AUGUST, 2006.

P.C.

The counsel for the appellant argued that the learned trial Judge ought to have framed the question of jurisdiction by way of preliminary issue under section 9A of the Code of Civil Procedure, 1908 as is applicable to the courts in the State of Maharashtra.

2. Section 9A reads thus-

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."- Maharashtra Act (65 of 1977) (w.e.f.19.12.1977)"

3. In our considered view, section 9A has no application to the consideration of the application for the grant of leave to defend under Order XXXVII of the Code of Civil Procedure. The submission of the counsel for the appellant that the application for grant of leave is nothing but an application for interim relief within the meaning of section 9A is fallacious and misplaced.

4. The counsel for the appellant then submitted that even if section 9A of Civil Procedure Code was not attracted, since in opposition to the Summons for Judgment, the defendant raised the plea of want of jurisdiction of this court, the trial Judge was required to decide the issue of jurisdiction while considering the said matter.

5. There is no doubt that if the defendant in the affidavit in opposition to the Summons for Judgment or the application for leave to defend, raises the objection about the jurisdiction of the court and presses the same, such aspect needs to be considered at least, prima facie, to find out whether any triable issue or an issue of substantial nature which needs to be tried in the suit has been raised by the defendant or not. But insofar as the present case is concerned, it does not appear that the advocate for the defendant pressed the point of want of jurisdiction of this court. Had such point been raised, obviously, the learned Judge would have considered the same. Though the counsel for the appellant submitted that the point of jurisdiction was, in fact, pressed before the learned trial Judge, we find it difficult to accept the submission. It is so because even in the memo of appeal, no ground is set up by the appellant that the plea of want of jurisdiction was pressed before the learned Judge and the learned Judge did not consider the same. In opposition to the Summons for Judgment, many objections might have been raised by the defendant but the learned trial Judge was required to deal with such objections which were pressed for consideration and decision.

6. If there is any merit in the submission of the counsel for

the appellant that the plea of want of jurisdiction was pressed before the learned trial Judge but the same was not dealt with, the appellant would have surely filed review application before the Judge but admittedly that has not been done.

No other point was argued before us. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)